HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No. 7835 of 2006

Between:

The Basava Taraka Rama Cheneta Parisramikula
Sahakara Ulpatti Mariyu Vikraya Sangham Ltd.,
represented by its President Nakkina
Appa Rao.

.. Petitioner

AND

The Assistant Director, Handlooms,
Gandhi Nagar,Machilipatnam,
Krishna District and others

..Respondents.

Counsel for the Petitioner: Smt Y.Anupama Devi

Dated: April 21, 2006

ORDER:

Per Sri G.S.Singhvi, CJ

This is a petition for quashing orders dated 31-8-2004 and 27-6-2005 passed by District Consumer Disputes Redressal Forum, Krishna, Machilipatnam in C.D.No.75 of 2001 and by Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short 'the Commission')in F.A.No. 778 of 2005, respectively.

A perusal of the record shows that on a complaint made by non-petitioner Nos. 4 to 15 that the petitioner had been regularly deducting 10% of their wages from every general member towards the thrift fund, but the same were not transferred to the security scheme and were not deposited with Assistant Director, Handlooms, Machilipatnam, the District Forum issued notice to the petitioner. In the counter-affidavit, the petitioner did not deny the allegations contained in the complaint filed by respondents 4 to 15, but pleaded that the amount could not be transferred due to financial constraints. At the same time, the petitioner raised an objection to the maintainability of the complaint by stating that the District Forum does not have the jurisdiction to entertain the grievance of the complainants.

The District Forum ruled that deduction of 10% of the wages towards thrift fund and not depositing the same in the financing bank, amounted to deficiency in service within the meaning of Section 2 (1) (g) of the Consumer Protection Act, 1986 (for short 'the Act'). The District Forum further held that there was no justification for the petitioner's failure to deposit the thrift fund amount collected from the complainants. On that premise the District Forum allowed the complaint made by respondents 4 to 15 and directed the petitioner to deposit the thrift fund amount with interest at 12% per annum from the date of complaint i.e.,
20-11-2001 till the date of realization and also pay compensation and costs of Rs.1000/- and Rs.2000/- respectively to each of the complainants.

The petitioner challenged the order of the District Forum by filing an appeal under Section 15 of the Act. At the hearing of the appeal, counsel appearing for the petitioner made a statement that his client is intending to repay the amount and sought time. In view of the statement of the advocate, the State Commission did not go into the legality of order passed by the District Forum and disposed of the appeal by granting three months time to the petitioner to comply with the order of the District Forum.

It is borne out from the record that the petitioner did not comply with the order of the District Forum and, therefore, complainants filed P.P.No.2 of 2005 before the District Forum. By an order dated 27-12-2005 the District Forum issued warrant against the petitioner's society. Revision filed by the petitioner was dismissed by the State Commission vide its order dated 22-2-2006. This is the background on which the petitioner has invoked jurisdiction under Article 226 of the Constitution of India.

Learned counsel for the petitioner reiterated the objection to the jurisdiction of the District Forum to entertain the complaint made by respondents 4 to 15, but we have not felt impressed. In our opinion, there is no substance in the argument of the learned counsel that the District Forum did not have the jurisdiction to entertain the complaint. A conjoint reading of the definition of the terms, 'consumer', 'consumer dispute', 'defect' 'deficiency' and 'service' makes it clear that failure of the petitioner to transfer the amounts deducted towards thrift fund in the financing bank amounted to defect/deficiency of service. In **Lucknow Development Authority v. M.K.Gupta** the Supreme Court interpreted the definition of service, as contained in Section 2 (1) (o) of the Act and observed:

> "The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionarily means 'one or some or all'. In Black's Law Dictionary it is explained thus, 'word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject-matter of the statute'. The use of the word 'any' in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable of coming into being, possibility'. In Black's Law Dictionary it is defined as 'existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement already made'. In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users".
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> In that case, the Court was dealing with the question whether housing construction could be regarded as service under Section 2 (1) (o) of the Act. While the matter was pending in this Court, "housing construction" was inserted in the inclusive part of Ordinance No.24 of 1993. Holding that housing activity is a service and was covered by the main part of the definition, the Court observed:
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> "….the entire purpose of widening the definition is to include in it not only day-to-day buying and selling activity undertaken by a common man but even such activities which are otherwise not

commercial in nature yet they partake of a character in which some benefit is conferred on the consumer."

In **Indian Medical Association v. V.S.Shantha** the Supreme Court approved the definition of 'service' and also construed the word deficiency to include the service provided by medical practitioners. It is thus clear that non-transfer of the amount deducted from the wages from non-petitioners 4 to 15 amounts to deficiency in service and the District Forum as well as the State Commission did not commit any illegality by entertaining the complaint made by non-petitioners 4 to 15.

We are further of the view that the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India for nullifying the order passed by the District Forum because the advocate who appeared on its behalf before the State Commission unequivocally agreed his client's liability to pay the amount due to non-petitioners 4 to 15. Having admitted the liability, the petitioner cannot turn around and question the order of the District Forum.

No other point has been argued.

For the reasons mentioned above, the writ petition is dismissed.

G.S.SINGHVI, CJ

21.4.2006 **G.BHAVANI PRASAD, J.**

GRR